

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

PAUL NARKIN	§	
	§	
V.	§	CIVIL ACTION NO. G-06-449
	§	
SEAN MICHAEL REAGAN, ET AL.	§	

OPINION AND ORDER

On August 29, 2006, Plaintiff, Paul Narkin, filed a “ Motion to Consider Amended Complaint.” In his Motion, Narkin asks the Court to now find that it has jurisdiction in this case because his Amended Complaint, filed without leave of Court on August 10, 2006, included a Due Process claim and thereby created federal question jurisdiction. Narkin’ s Motion must be denied.

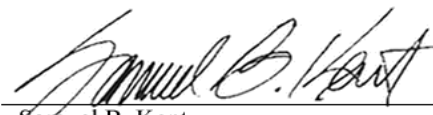
Narkin’ s original complaint raised no federal question jurisdiction, it was explicitly based on diversity jurisdiction. Since there was not complete diversity, the Court denied Narkin’ s Application to Proceed In Forma Pauperis and ultimately dismissed his complaint on August 15, 2006, after Narkin failed to pay the filing fee by the August 11, 2006, deadline imposed by the Court.

Narkin’ s attempt to cure the jurisdictional problem in this case is futile. The existence of federal jurisdiction must be disclosed in the first complaint filed rather than some later amendment. “ A District Court is powerless to grant leave to amend when it lacks jurisdiction over the original complaint.” Morongo Band of Mission Indians v. California State Board of Equalization, 858 F.2d 1376, 1381 (9th Cir. 1988) Thus, where the original complaint does not “ arise under” federal law, the complaint cannot be amended to allege a different claim that does.

Rather, the action must be dismissed. Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 830-31 (1989) see also Stafford v. Mobile Oil Corp., 945 F.2d 803, 806 (5th Cir. 1981)

It is, therefore, the **ORDER** of this Court that the “Motion to Consider Amended Complaint” (Instrument no. 11) of Plaintiff, Paul Narkin, is **DENIED**.

DONE at Galveston, Texas, this 7th day of September, 2006.



Samuel B. Kent
United States District Judge